

27 November 1972

MEMORANDUM FOR: Chairman and Members of ICRC

SUBJECT : Associated Press Appeal to ICRC from
CIA Denial

I attach a memorandum from me concerning the Associated Press appeal to ICRC from a CIA denial, item 4. A. on the December agenda. Also attached is a copy of the CIA-AP correspondence which preceded and led to the AP appeal.

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JOHN S. WARNER
Acting General Counsel

Attachments

OGC ☐ JSW:mks

cc: Executive Director-Comptroller

SA/ExDir/IC

Assistant to the DCI

OGC chrono

/subject RELEASE OF INFORMATION

☐ Signer

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27 November 1972

MEMORANDUM FOR: Chairman and Members of ICRC

SUBJECT : Associated Press Appeal to ICRC from
CIA Denial

1. By letter of 11 October 1972, the Associated Press has appealed to the ICRC a CIA denial of a request for certain documents concerning [redacted] The appeal is set as item 4. A. on the agenda for the December meeting, dated 20 November.

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2. The Director of Central Intelligence has a statutory responsibility to protect intelligence sources and methods from unauthorized disclosure (National Security Act of 1947, 50 U.S.C. 403 (d)(3)). The Director has reviewed the documents requested by the Associated Press in light of his statutory responsibility, as well as the standards prescribed by Executive Order 11652. He has concluded the documents must remain classified. In view of this decision, he has concluded also that it would be inappropriate to submit the documents or copies of the documents to Committee members. By agreement with Ambassador Eisenhower, they are being made available to Ambassador Eisenhower for his review prior to the December meeting. To some degree the statutory protection of sources and methods, in this decision, may be considered to be in conflict with the review procedures under the Executive Order. In any such conflict the statute of course must prevail and the Executive Order does not purport an intention to the contrary. The purpose of this memorandum, therefore, is to explain the basis for this decision.

3. As indicated, the Director is statutorily responsible for protecting sources and methods from unauthorized disclosure. This responsibility has received other legislative and judicial endorsement. The CIA Act of 1949 (50 U.S.C. 403g.) provides that in order further to implement the Director's responsibility to protect sources

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and methods. CIA is exempt from provisions of law which require the publication or disclosure of the organization, functions, names, official titles, salaries or numbers of personnel employed by the Agency. Under the CIA Retirement Act of 1964 (50 U.S.C. 403 Note), also in order to implement that responsibility of the Director, determinations by the Director under that Act are final and are not subject to review by any court. The United States Court of Appeals for the Fourth Circuit pointed out that the Director's responsibility to protect sources and methods confers upon him the positive duty to take such steps as authorizing the CIA employee to warn emigre groups that one of their number is or may be "a secret Soviet agent" and that the "action here to protect the integrity of sources of foreign intelligence was explicitly directed by Congress." (Heine v. Raus 399 F. 2d 787, 790 (1968)) In the recent Marchetti case, the same United States Court of Appeals, in asserting the inability of the courts to serve effectively in the review of secrecy classifications in foreign intelligence matters, emphasized the need for expertise.

The significance of one item of information may frequently depend upon knowledge of many other items of information. What may seem trivial to the uninformed, may appear of great moment to one who has a broad view of the scene and may put the questioned item of information in its proper context.

And in a recent brief for the Supreme Court (Environmental Protection Agency v. Mink, May 1972), the Department of Justice stressed the subtleties involved in classification determinations.

Whether a document requires a top secret or secret classification and whether that classification can safely be removed or changed, cannot be decided on the basis of simply reading the documents. Material that on its face seems relatively innocuous may, to one more familiar with the intricacy and subtlety of what is involved, have an entirely different significance.

4. The responsibility to protect sources and methods thus is entrenched in law. It is recognized and affirmed by Executive Order 11652. It is incorporated into exemption 5(B)(2) and is a basis for departmental determinations to continue the classification of documents. Under the Order it is not necessary that the sources and

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methods which would be revealed by declassification be active sources or methods or that they have ongoing utility or value. Indeed, it should be recognized that public revelation of a source or method could cause other intelligence sources to discontinue their activities of cooperation with CIA or other U. S. Government intelligence components in their intelligence-gathering functions. It is essential in this regard that we be able to continue to assure prospective sources, foreign intelligence services and other persons with whom the Agency conducts clandestine business that the Agency is able to and does protect secrets and the identity of intelligence sources.

5. With reference to the AP request, the documents in question were reviewed by CIA analysts thoroughly experienced in all aspects of intelligence and intelligence operations. The conclusion was that under existing law and regulations these documents should remain classified. It was recognized in certain of the documents that there were sentences or phrases which in and of themselves were not classified. However, to extract such sentences and phrases out of context either distorts their meaning or renders them meaningless. Over-all the documents in their full thrust and meaning should be classified.¹ On appeal, the CIA Information Review Committee, composed of the Executive Director, the Inspector General and the General Counsel, all senior officials with experience dating

¹The problems involved in attempting to declassify portions of documents, quite aside from the fact that extracts might have little value, are well stated in the Government's brief for the Supreme Court in the Environmental Protection Agency v. Mink case.

These considerations are equally, if not more, pertinent when the problem is declassifying portions of documents. Just as the significance of the entire document may depend upon extraneous factors, so the significance of the particular portion frequently can be understood only in the context of the entire situation. There may be many portions of documents which, standing alone, appear quite insignificant to the untrained observer, but whose disclosure would actually pose serious adverse consequences for national defense or foreign policy. The decision whether particular portions of top secret and secret documents can safely be made public requires the kind of expert knowledge and judgment that the courts simply do not possess.

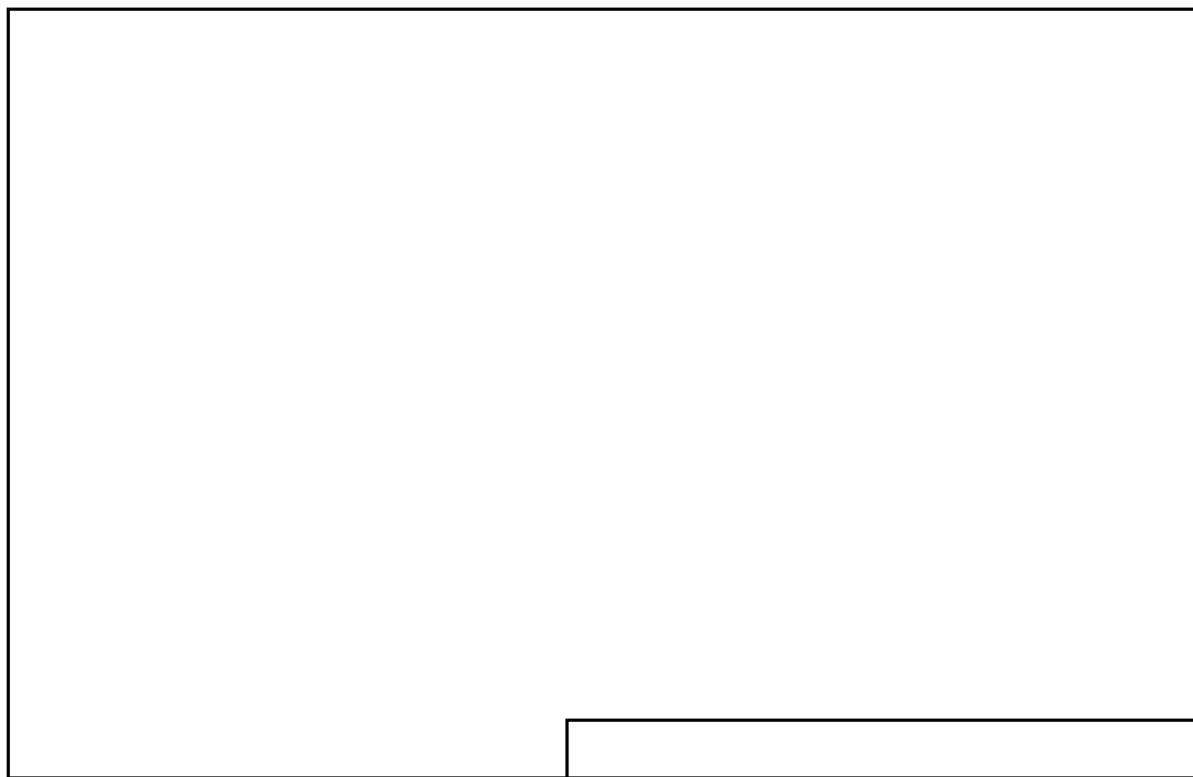
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from and including, as to two of them, OSS duty, affirmed and approved the decision to maintain classification. And although the Executive Order and the NSC Directive do not require the personal participation of the Director, the Director has made the review and reached the decisions mentioned above. CIA consideration of this request and appeal thus has not been taken lightly. The decisions reached reflect the Director's best judgment of the actions required in the discharge of his duties and responsibilities under both the National Security Act and the Executive Order.

6. In the following subparagraphs we comment on a few of the documents requested by the Associated Press. The comments are intended to indicate the nature of the source which could be revealed by declassification. We do not name persons.

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JOHN S. WARNER
Acting General Counsel

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BEST COPY
Available

WASHINGTON, D. C. 20505

11 Oct 72

Interagency Classification
Review Committee
National Security Council
Washington, D. C. 20505

Dear Mr. Chairman and distinguished Members:

I hereby appeal a denial by the Central Intelligence Agency of requests dated June 1 and July 6, 1972, for documents concern-

Attached copies of correspondence concerning these requests will show you what they are and the responses from CIA. In addition, there were some telephone exchanges following the CIA's June 26 letter in which I asked for, and was refused, suggestions as to how I could revise my June 1 request in order to meet the CIA's definition of "sufficient particularity."

As for reasons why the Interagency committee should overturn the CIA ruling, I hope you appreciate the difficulty of appealing a decision which has been communicated to me with no justification beyond the numerical citation of Sections of 5 (B) of Executive Order 11652. I cannot respond to particulars when none are given to me; nor can I make an affirmative case in any detail when the material on which such a case should be based is denied me.

As a general proposition, I urge you not to allow circumvention of Presidential intent through a subsidiary clause in the Executive Order. I ask that you act instead in accord with its prime stated purpose, as contained in its opening sentence:

"The interests of the United States and its citizens are best served by making information regarding the affairs of Government readily available to the Public."

Sincerely,

Lewis Culick

copy to Mr. Thurman, CIA

27^{SEP}
1972

Mr. Lewis Gulick
The Associated Press
1300 Connecticut Avenue, N. W.
Washington, D. C. 20036

Dear Lew:

By your letter of 21 August, you appealed to the CIA Information Review Committee the Agency decision not to declassify the documents which you had requested in your letter of 6 July 1972.

The Committee has examined the decision conveyed to you in my letter of 16 August and determined that all of the documents in question are exempt from the General Declassification Schedule under the provisions of 5(B)(2) of Executive Order 11652. Certain documents are also further exempt under Sections 5(B)(1), (3), or (4) of this Executive Order. If this identification of the reason for continuing the Classification permits you to file a further rebuttal, the Committee will reconsider its decision in the light of such information. If not, you may appeal this denial to the Inter-agency Classification Review Committee, in accordance with the pertinent Executive Order and the CIA implementing regulation. As you know, the Executive Director of the Committee is Mr. David R. Young of the National Security Council Staff.

Sincerely,

/s/ Angus MacLean Thuermer

Angus MacLean Thuermer
Assistant to the Director

TEL: 202-334-6400

THE ASSOCIATED PRESS
1300 CONNECTICUT AVE., N. W.
WASHINGTON, D. C. 20036

Executive Registry
77-3-72

21 Aug 72

Central Intelligence Agency
Information Review Committee
c/o Angus MacLean Thuermer
Assistant to the Director
Central Intelligence Agency
Washington, D. C. 20505

Dear Sirs:

I hereby appeal the decision, conveyed to me by Mr. Thuermer by letter dated 16 August, denying my request of 16 July for Central Intelligence Bulletins and Situation Reports pertaining

Since Mr. Thuermer's 16 August letter cited only Section 5 (B) of Executive Order 11652, without any specifics as to which portion of Section 5 (B) was being invoked or the justification therefor, it gives me no opportunity to present to you a specific rebuttal to whatever reasoning lies behind the rejection.

As a general proposition, in line with the intent of the Presidential Order and with the longstanding practice of declassifying historical documents, may I point out that:

Sincerely,


Lewis Gulick

Executive Order
172-30721/3

16AUG
1972

Mr. Lewis Sulick
The Associated Press
1300 Connecticut Avenue, N. W.
Washington, D. C. 20036

Dear Lew:

In further response to your request of 6 July, the Agency component responsible for the matter advises that it has considered your request in light of Executive Order 11652 and, in particular, Section 5(B), and has concluded that the documents requested must remain classified. Your request accordingly is denied.

You may appeal this decision directly to the Central Intelligence Agency Information Review Committee, established pursuant to Section 7(B)(2) of Executive Order 11652. Such an appeal should be by letter or other written communication, addressed to the above-named Committee, in care of the undersigned, and should (1) indicate the decision being appealed, and (2) present any information or justification you wish to submit.

Sincerely,

/s/ Angus MacLean Thuerner

Angus MacLean Thuerner
Assistant to the Director

[redacted] bac(14 Aug 72)

Orig - Adse

1 - Asst. to the Director

1 - D/CRS

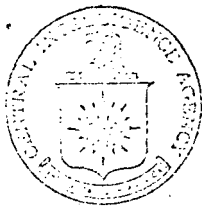
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Approved For Release 2004/11/29 : CIA-RDP75-00793R000200180006-3

1 - SAIC



CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505

OFFICE OF THE DIRECTOR

14 JUL
1972

Mr. Lewis Gulick
The Associated Press
1300 Connecticut Ave., N. W.
Washington, D. C. 20036

Dear Lew:

I have your letter dated 6 June (apparently 6 July was the date) requesting certain documents. Your request has been referred to appropriate officials and we will have a substantive reply for you at the earliest possible date.

Sincerely yours,

/s/ Angus MacLean Thuermer

Angus MacLean Thuermer
Assistant to the Director

OCC:RHL:sin (13 Jul 72)

Original - Addressee

- 1 - Asst. to the Director
- 1 - OCC - RELEASE OF INFORMATION
- 1 - SA/Information Control
- 1 - ☐ signer
- 1 - Chrono

subj

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Approved For Release 2004/11/29 : CIA-RDP75-00793R000200180006-3

Approved For Release 2004/11/29 : CIA-RDP75-00793R000200180006-3

WASHINGTON, D. C. 20505

Office of the Director

26 June 1972

Mr. Lewis Gulick
The Associated Press
1300 Connecticut Avenue, N. W.
Washington, D. C. 20036

Dear Lew:

We have received your letter of June 1, 1972, in which you requested the Agency to furnish you documents on the following subject: [REDACTED]

With regard to your request, I am informed that you have not described the documents you requested with sufficient particularity to permit them to be located or identified with reasonable effort. However, if you wish, you may resubmit your request, furnishing additional information. Alternatively, you may appeal this decision directly to the Central Intelligence Agency Information Review Committee, established pursuant to section 7(B)(2) of Executive Order 11652. Such an appeal should be by letter or other written communication addressed to the above Committee, in care of the undersigned, and should (1) indicate the decision being appealed and (2) present any information or justification you may wish to submit.

Sincerely yours,

[REDACTED]
Angus MacLean Thuermer
Assistant to the Director

066-72-0785

THE ASSOCIATED PRESS

1300 CONNECTICUT AVE., N.W.

WASHINGTON, D. C. 20036

1 June 72

Executive Registry
72-36721/

Mr. Angus Thuermer
Assistant to the Director
Central Intelligence Agency
Washington, D.C. 20505

Dear Mr. Thuermer:

Confirming our telephone conversation of today, I am requesting in behalf of the Associated Press the following documents in line with the Presidential Executive Order of March 3:

833-5380.

I can be reached at the above address or phone

Sincerely,

L. J. Dulick
Lewis Dulick

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Next 5 Page(s) In Document Exempt

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